

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY



(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 24 JAN 2006

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Applicant's or agent's file reference P600421PCT1	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/NL2004/000696	International filing date (day/month/year) 04.10.2004	Priority date (day/month/year) 02.10.2003
International Patent Classification (IPC) or national classification and IPC A23G9/02		
Applicant CAMPINA, B.V.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau a total of 5 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 02.08.2005	Date of completion of this report 25.01.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Boddaert, P Telephone No. +31 70 340-3471 	

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/NL2004/000696

Box No. 1 Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-18 as originally filed

Claims, Numbers

1-44 received on 02.08.2005 with letter of 02.08.2005

Drawings, Sheets

1/2, 2/2 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify):*
 - ☐ any table(s) related to sequence listing *(specify):*
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify):*
 - ☐ any table(s) related to sequence listing *(specify):*

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/NL2004/000696

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	11,20-26,33-36,38
	No: Claims	1-10,12-19,27-32,37,39-44
Inventive step (IS)	Yes: Claims	
	No: Claims	1-44
Industrial applicability (IA)	Yes: Claims	1-44
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V

Reference is made to the following documents :

D1 : US4127679

D2 : US6497913

D3 : EP1348341

D4 : US6596333

D5 : Journal of Dairy Science , 1997 , vol.80 , nr. 10 , p.2631-2638 (XP8030810)

Remark :

a. Although claims 1,27,32 and 37,41 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought and/or in respect of the terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.

b. Claims 1-44 relate to a product , use and method defined by reference to a freezing point parameter. it is difficult to compare what is set out in the present application with what is set out in the prior art.

It is true that documents D1-D5 (all disclosing different compositions) do not specifically disclose whether or not the blends , mixes and ice creams fall within the parameter specified in the claims.

However , this does not automatically mean that the blends , mixes and ice creams disclosed in documents D1-D5 , with their specific compositions , do not fall within the scope of claim 1 (freezing point of -3.5°C or lower), and hence there is a novelty problem.

No evidence is available (f.i. comparative testing) to prove that there is a real difference.

1. The present application does not meet the requirements of Article 33(2) PCT because the subject-matter of claims 1-10,12-19,27-32,37,39-44 is not new.

Remark : the applicant states that a 'blend' is a non-frozen composition of ingredients suitable for preparing ice cream. Claims 32-36 all refer to a blend (suitable for preparing ice cream) comprising unsaturated emulsifier , fat , sugar , stabiliser and milk solids non fat (as only technical features , and to which other ingredients could be added). Indeed ,

any document disclosing a composition comprising these components as technical features represents therefore a lack of novelty for the corresponding claim.

a. Document D1 discloses (col.2 l.6 - col.3 l.52 ; examples , claims) a composition for the preparation of ice cream comprising unsaturated emulsifier , fat , sugar , stabilizer and milk solids non-fat. An ice cream mix and a resulting ice cream (considered intrinsically having a freezing point of -3.5°C or lower) comprising between 0.2 - 0.35% (w/w) of unsaturated emulsifier.

The subject-matter of claims 1-9,27-32,37,39,40 is therefore not new.

b. Document D2 discloses (col. 6,7 , examples , claims) a composition for the preparation of ice cream comprising unsaturated emulsifier , fat , sugar , stabilizer and milk solids non-fat. An ice cream mix and a resulting ice cream (considered intrinsically having a freezing point of -3.5°C or lower) comprising up to 1% of an unsaturated monoglyceride emulsifier , resulting in stabilized small gas cell size.

The subject-matter of claims 1-10,12-19,27-32,37,39-44 is therefore not new.

c. Document D3 discloses (par. 22 , examples , calims) a composition suitable for the preparation of ice cream comprising unsaturated mono-/di-glyceride emulsifier , fat , sugar , stabilizer and milk solids non-fat. An ice cream mix and a resulting ice cream (considered intrinsically having a freezing point of -3.5°C or lower) comprising between 0.2 - 1.5% (w/w) of unsaturated emulsifier.

The subject-matter of claims 1-9,27-32,37,39,40 is therefore not new.

d. Document D4 discloses a composition for the preparation of ice cream comprising unsaturated emulsifier , fat , sugar , stabilizer and milk solids non-fat. An ice cream mix and a resulting ice cream (considered intrinsically having a freezing point of -3.5°C or lower) comprising between 0.2 - 0.35% (w/w) of unsaturated monoglyceride emulsifier , resulting in a product with improved shrinkage resistance and a stable air cell size even after storage or heat shock.

The subject-matter of claims 1-9,27-32,37,39,41-44 is therefore not new.

e. Document D5 discloses (p.2634-2637 , figure 5,6) a composition for the preparation of ice cream comprising unsaturated emulsifier (0.5%) , fat , sugar , stabilizer and milk solids non-fat. An ice cream mix and a resulting ice cream comprising the unsaturated emulsifier (0.5%) and the use of unsaturated emulsifier for an improved microstructure and improved small air cell stability in ice cream.

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/NL2004/000696

The subject-matter of claims 1-9,27-32,37,39-44 is therefore not new.

2. Dependent claims 11,20-26,33-36,38 do not contain any features which , in combination with the features of any claim to which they refer , meet the requirements of the PCT in respect of inventive step (Article 33(3) PCT) , because in these claims a slight change is defined which comes within the scope of the customary practice followed by persons skilled in the art , especially as the advantages thus achieved can readily be foreseen.